

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 98-0579P**

**Withholding Tax  
Calendar Year 1997**

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**ISSUE(S)**

I. **Tax Administration** – Penalty

**Authority:** IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

**STATEMENT OF FACTS**

Taxpayer protests the penalty assessed for the late filing of its W-2's and states the penalty is excessive and will put them out of business. They further state they were timely in the filing requirements and that the envelope the department returned for review was not representative of the envelope that the original returns were sent in. Taxpayer further requested a hearing on September 23, 1998. A hearing was scheduled for Wednesday, January 13, 1999. No one appeared at the hearing, therefore, the Department makes its decision based upon information contained in the file and taxpayer's letter of protest dated September 23, 1998.

I. **Tax Administration** – Penalty

**DISCUSSION**

At issue is whether the taxpayer was negligent in timely filing its W-2 returns.

A review of the envelope in which the returns were mailed indicates it is postmarked April 2, 1998 which is clearly past the due date.

IC 6-8.1-10-6(a) states:

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If a person fails to file an information return required by the department, a penalty of ten dollars (\$10) for each failure to file a timely return, not to exceed twenty-five thousand dollars (\$25,000) in any one (1) calendar year, is imposed. The taxpayer failed to timely file 120 W-2 returns, therefore the penalty may not be waived.

**FINDING**

Taxpayer's protest is denied.